HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No.10633 of 2006

An application under Articles, 226 and 227 of the Constitution of India.

Smt. Pramila Samal ... ... Petitioner.

Versus.

The State of Orissa & Others ... ... opp.parties.

For Petitioner : M/s. G.P. Mohanty & A.P. Mohanty.

For opp.parties : M/s. Samir Ku. Mishra, M.R. Dash & M. Satapathy.
(opp.party no.4)

M/s. P.K. Rath-1, S. Barik, S.M. Ali, S.Sahoo and S. Mohanty.
(opp.party no.6)

Additional Standing Counsel
(for opp.party nos.1 to 3)

PRESENT

THE HON'BLE SHRI JUSTICE B.K.NAYAK

Date of hearing :19.03.2014 : Date of judgment: 23.04.2014

B.K.NAYAK, J. The petitioner in this writ petition challenges the advertisement dated 14.11.2005 vide Annexure-4 and the order intimating to the petitioner vide Memo No.685 dated 22.04.2006 about the order dated 19.04.2006 passed by the Collector, Jajpur-opposite party no.2.

2. In pursuance of the advertisement for filling up of the post of Anganwadi worker in village-Raichhanda under Dharmasala ICDS Project in the district of Jajpur, the petitioner applied for the same and appeared

for the written test and pursuant to call letter dated 11.10.2004 (Annexure-1) she attended the interview on 18.10.2004. It is alleged by the petitioner that in the interview she was awarded 2.550 marks out of 15 and that one Kabita Sahu was awarded 9.3 marks and other candidates were given higher marks than the petitioner. Challenging the fairness in the award of marks in the interview she made a representation to the Collector. But her representation was not attended to for which she filed W.P.(C) No.12240 of 2004, which was disposed of on 11.11.2004 by this Court directing the Collector to dispose of the representation of the petitioner in accordance with the law within a period of 30 days of receipt of the certified copy of the order along with a copy of the writ petition. It is stated by the petitioner that the Collector-opposite party no.2 issued letter dated 01.08.2005 (Annexure-3) to the petitioner asking her to remain present on 8.8.2005 at 3.30 P.M. for consideration of her representation. It is alleged that the petitioner remained present in the office of the Collector on 08.08.2005 till the closure of the office hours, but she was verbally told that the Collector was on tour on that day and another date would be intimated to her. It is stated that no further intimation was given to her to attend the office of the Collector, but the second notification dated 14.11.2005 vide Annexure-4 inviting fresh applications for appointment of Anganwadi worker in the village concerned was issued. The petitioner, therefore filed another writ application bearing W.P.(C) No.1580 of 2006 challenging the said second notification. The said writ petition was disposed of on 27.2.2006 directing that the selection process in pursuance of the fresh advertisement dated 14.11.2005 may continue

but no appointment shall be made in pursuance thereto till the Collector takes a decision on the representation of the petitioner pursuant to the order dated 11.11.2004 passed in W.P.(C) No.12240 of 2004.

After passing of the aforesaid order, memo dated 22.04.2006 (Annexure-5) was issued to the petitioner intimating that pursuant to the order passed by this Court in W.P.(C) No.12240 of 2004, the Collector has passed order on 08.08.2005 declaring the selection process undertaken in pursuance of the first advertisement as null and void, basing on the records produced by the CDPO, Dharmasala on 08.08.2005 in presence of the petitioner and that the C.D.P.O., Dharmasala had been instructed to take steps for fresh selection of Anganwadi worker for the Anganwardi Centre and that since the order of the Hon'ble High Court has already been complied with, the Collector was not inclined to again interfere on the representation of the petitioner.

3. It is the submission of the learned counsel for the petitioner that though the petitioner was present in the office of the Collector on 08.08.2005 there was no consideration of her representation and she was given to understand that the Collector was on tour and that she would be called again and, therefore, the communication to the petitioner under Annexure-5 that in her presence the first selection process was declared as null and void by the Collector is not correct and that to suppress the wrong committed in the process of selection, the same was declared as null and void to frustrate the order of this Court.

The petitioner, therefore, has prayed for quashing the second notification (advertisement) under Annexure-4 and the communication made to her about declaring the first selection process null and void.

4. A counter affidavit has been filed by opposite party no.3, the C.D.P.O., Dharmasala, wherein it is stated that as per the Government guidelines the selection of Anganwadi worker is to be made on the basis of career marking plus interview and viva-voce test. It is stated that the petitioner stood second in the career marking and on final selection she stood in 3rd position as per the result sheet vide Annexure-B/3. It is stated that after receipt of the certified copy of the order passed by this Court in W.P.(C) No.12240 of 2004, the Collector-opposite party no.2 considering the representation of the petitioner in presence of the petitioner as well as the C.D.P.O., Dharmasala and on perusal of the materials available on record and the allegations made in the representation annexed to the aforesaid writ petition, came to the conclusion that the interview was not conducted in a fair and impartial manner and, therefore, he set aside the said interview and directed the C.D.P.O., Dharmasala to take steps for fresh selection of Anganwadi worker for Raichhanda Anganwadi Centre. Subsequently in pursuance of the order passed in the second writ petition, i.e., W.P.(C) No.1580 of 2006, the Collector having found that the order passed in W.P.(C) No.12240 of 2004 has already been complied with by the Collector and the representation of the petitioner has been considered and the first selection has been cancelled with instruction to take steps for fresh selection process, the Collector passed the order under Annexure-5 as

there was nothing further to be considered. It is also specifically stated that on 08.08.2005 the Collector was present so also the petitioner as well as the C.D.P.O., and on that day, the petitioner's representation was considered and basing on the records produced by the C.D.P.O., order was passed for setting aside the interview and that the averments made by the petitioner in the writ petition that on 08.08.2005 the Collector was not present, are not correct.

5. Opposite party no.6 has filed a counter affidavit substantially endorsing the stand taken in the counter affidavit of opposite party no.3. Besides, it is also stated by opposite party no.6 that the interview Board consisted of five different officials and non-officials as per the Government guidelines and the members of the Interview Board used to give individual marks to the candidates as per their performance in viva-voce test. It is also stated that in the selection conducted in pursuance of first advertisement the petitioner stood 3rd in the merit list and, therefore, she was not entitled to be appointed.

6. During the pendency of this writ petition a fresh advertisement for appointment of Anganwadi worker in the Raichhanda-1 Centre was issued. By order dated 20.11.2007 passed in Misc. Case No.9322 of 2007 this Court directed that the candidate selected in pursuance of the said advertisement shall be appointed subject to the result of the writ petition. It was also directed that if the petitioner has filed her application in pursuance of the said advertisement, her case shall also be considered. It appears from the counter affidavit of opposite party no.6 that the said opposite party as well as the petitioner applied in

pursuance of the said advertisement and opposite party no.6 having secured the highest marks was selected and has been engaged as Anganwadi Worker for the Centre in question.

7. It is trite law, as held by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Shankarsan Dash v. Union of India : AIR 1991 SC 1612*** that appearance of the name of a candidate in the select list does not give him a right of appointment. Similar view has also been expressed subsequently in the case of ***Hanuman Prasad v. Union of India 1996 (1) SCC 742; State of U.P. and others v. Rajkumar Sharma and others : (2006) 3 SCC 330;*** and ***S.S. Balu and another v. State of Kerala & others (2009) 2 SCC 479.***

8. In the instant case, the petitioner was placed in the 3rd position in the merit list prepared in pursuance of the first advertisement for appointment of one Anganwadi Worker in the Centre. She alleged that opposite party no.4 was given unusually high marks in the interview and she was given low marks and therefore, she made representation to the Collector-opposite party no.2. The interview was being held by the Board consisting of five members. The Collector on consideration came to the conclusion that the interview was not conducted fairly and properly. Therefore, the only course open to the Collector was to set aside the selection and direct for fresh selection, which has been done in the instant case. By merely setting aside the first interview would not entitle the petitioner to get selected for appointment.

The allegation of the petitioner that her representation was not considered has been denied by opposite party nos.3 and 6. This

disputed question of fact cannot be gone into in this writ petition. Even assuming the allegation of the petitioner to be correct and that the Collector would have been required to consider her representation afresh in her presence, the selection process would have been set aside and fresh selection ordered, if the Collector would have come to the conclusion that the interview was not conducted fairly and properly.

9. In the aforesaid view of the matter, the petitioner is not entitled to any relief in this writ petition, which is accordingly dismissed. No costs.

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B.K.Nayak,J.

Orissa High Court, Cuttack
The 23th. April, 2014/Gs.